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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,570	11/29/2001	Harry A. Loder	57002US002	3753

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Office of Intellectual Property Counsel
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EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/997,570

Applicant(s)

LODER ET AL.

Examiner

Randall Chin

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 6-8, 11, 13, 15-21 and 23-26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 10, 12 and 14 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 112901, 071803, 050603
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Claims 6-8, 13, 15-21 and 23-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the Paper filed December 12, 2003.
2. Applicant's election of the invention defined by Group I and the Species of Figs. 1-5, claims 1-5, 9-12, 14 and 22 in the Paper filed December 12, 2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

It should be noted that claim 11, indicated by Applicant as readable on the elected invention, is being withdrawn from consideration since claim 11 recites that the grip includes a guide track for the handle and is not disclosed in the elected invention of Figs. 1-5.

3. Claim 2, lines 2-3, the recitation "said socket having attachment to a frame" is awkward and makes the claim language unclear. Also, "a frame" (line 3) should be positively recited.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Benson '249.

As for claim 1 and 14, the patent to Benson '249 teaches a cleaning device comprising a handle or shaft 26 having a first end opposite a second end, a cleaning head assembly 10 at said first end of said shaft, said cleaning head assembly including a movable strip 30, an actuator (tip end of chain 40 as shown in Fig. 1) at said second end of said shaft, and a connector defined by chain 40 coupling said cleaning head to said actuator to move said movable strip during positional change of said actuator.

As for Benson's device being for cleaning recessed surfaces, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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As well as claim 2 is understood, Benson '249 further teaches that the cleaning head assembly further includes a socket (unlabeled ring/socket as best seen in Figs. 1 and 3) to attach the cleaning head assembly to said shaft, said socket having attachment to a frame that includes a projection defined by any of upper portions 24 to direct said movable strip toward a recessed surface.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-3, 9, 10 and 12 are rejected under 35 U.S.C. 102(a) as being anticipated by Wenger '077.

As for claim 1, the patent to Wenger '077 teaches in Fig. 1 a cleaning device comprising a shaft or handle 11 having a first end opposite a second end, a cleaning head assembly 15 at said first end of said shaft, said cleaning head assembly including a movable strip (tissue paper as recited in col. 4, lines 48-49), an actuator 17, 29, 33 at said second end of said shaft, and a connector defined by flexible pushrod 27 (Fig. 2) coupling said cleaning head to said actuator to move said movable strip during positional change of said actuator (col. 6, lines 30-34).

As for Wenger's device being for cleaning recessed surfaces, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See

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In re Casey, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As well as claim 2 is understood, Wenger '077 further teaches that the cleaning head assembly further includes a socket (unlabeled but still shown where handle 11 is inserted therein in Fig. 2) to attach the cleaning head assembly to said shaft, said socket having attachment to a frame defined by a finger or "projection" 19 to direct said movable strip toward a recessed surface (again intended use).

As for claim 3, the projection further includes a first slit or groove 23 (Fig. 1) opposite a second slit or groove 23 (Fig. 1), said movable strip located adjacent to said first groove and said second groove while moving during positional change of said actuator.

As for claims 9 and 10, the actuator includes a stationary part merely defined by grip 17 and an adjustable part defined by slide button or "handle" 19 having a first position and a second position, said adjustable part coupled to said connector 27 to move said movable strip (i.e., toilet paper) during positional change of said adjustable part between said first position and said second position

As for claim 12, Wenger '077 teaches all of the recited subject matter previously mentioned. Wenger further teaches that the stationary part 17 is mounted securely at said second end of said shaft 11 and passes "through" said adjustable part (Figs. 3 and 4) in a broad sense.

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Allowable Subject Matter

7. Claim 22 is allowed.

Claims 4-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Robert Warden, can be reached at (571) 272-1281. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Randall Chin", written in a cursive style.

Randall Chin
Primary Examiner
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